IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3222 OF 2007
IN
FIRST APPEAL NO.856 OF 2003

Lalman Bachu Tripathi ...Applicant
vs.
Ramdular Vidyanath Kahar ...Respondent

WITH
CIVIL APPLICATION NO.3627 OF 2005
IN
FIRST APPEAL NO.856 OF 2003

Ramdular Vidyanath Kahar ...Applicant
vs.
Lalman Bachhu Tripathi ...Respondent

Mr.M.U.Pandey for the Applicant in C.A.No.3222/07 and for the Respondent in C.A.No.3627/2005
Ms Swati Sawant for the Respondent in C.A.No.3222/07 and for the Applicant in C.A.No.3627/2005

CORAM: A.S.OKA,J.
DATE : NOVEMBER 28,2007.

P.C.:

1. Civil Application No.3222 of 2007 has been filed by the Appellant-plaintiff and Civil Application No.3627 of 2007 has been filed by the Respondent-defendant. The Appellant filed a suit for possession of a shed admeasuring 380 sq.ft. more particularly described in the plaint. The suit was dismissed by the trial Court. The trial court held that the Appellant has failed to prove that he is the owner of the suit premises. During the pendency of the suit, the Court Receiver, High Court, Bombay was appointed as the Receiver of the suit premises and the Appellant was appointed as an agent of the Court Receiver. The Appeal preferred by the Appellant has been admitted and on the Civil Application No.1930/2003 this court passed an ad-interim order continuing the appointment of

the Court Receiver and continued the Appellant as an agent of the Court Receiver on payment of royalty of Rs.1500/- p.m. The said ad-interim order was confirmed by order dated 16th October 2004. Civil Application No.3627 of 2005 was filed by the Respondent on 16th April 2005 praying that the Appellant should be dispossessed and the Receiver should be directed to appoint the Respondent as an agent of the Court Receiver. An order was passed by this court on 8th March 2007 directing the Court Receiver to submit a report as regards observance of the terms and conditions of the agency of the appellant. Accordingly, a report was submitted by the Court Receiver.

2. The Court Receiver issued a direction on 25th June 2007 terminating the agency agreement of the Appellant on the ground that on 12th June 2007 one Mr.Wasim Kasmani was found to be running a business of ready-made clothes in the suit premises. It was stated in the said order that the said Wasim informed the representative of the Court Receiver that his father Siddique Kasmani is running the business without leave and licence agreement. Therefore, the Receiver proceeded to terminate the agency on the ground that the Appellant has committed a breach of the terms and conditions of the agency. Inspection report dated 12th June 2007 is filed on record. There is a further report dated 27th August 2007 submitted by the Court Receiver to which a copy of conducting agreement entered into by the Appellant on 15th March 2007 in favour of Mr.Siddique Kasmani has been annexed.

3. The submission of the learned Advocate for the Appellant is that the Receiver has committed an error by terminating the agency agreement without giving him an opportunity of being heard. He invited my attention to the terms and conditions of the conducting agreement executed by the Appellant. He pointed out that the Appellant has not parted with possession. He pointed out that the agreement specifically records that the conductor will not claim any right of any nature except the right of conducting the business. He also pointed out a clause in the agreement that the keys of the suit premises shall remain with the Appellant and every morning the conductor will collect the keys and after closing the shop in the evening, he will return the keys to the Appellant. he also invited my attention to the affidavit of the conductor i.e. Mr.Siddique Kasmani in which he has stated that he was not claiming any right in respect of the suit premises. The learned Advocate for the Appellant submitted that the conducting agreement has been executed only for a temporary period and the reason for executing agreement is the old age of the Appellant. It is stated that the conductor has been now removed. He, therefore, submitted that the order passed by the Court Receiver be set aside. The learned Advocate for the Respondent pointed out that during the pendency of the Civil Application No.3627 of 2005, serious breach has been committed by the Appellant. She pointed out that in terms of the order passed by this court, the Court Receiver herein after hearing the Appellant has passed a detailed order on 15th October 2007. She submitted that in view of the breach

admittedly committed by the Appellant, his appointment as an agent deserved to be set aside and therefore, the Receiver is justified in terminating the agency.

4. I have considered the submissions. There is no dispute about the execution of the agreement dated 15th March 2007 by the Appellant. The said agreement records that the conductor will be permitted to conduct the business in the suit premises from 1st March 2007 to 31st March 2008 at the monthly royalty/compensation of Rs.6,000/-. Though the said agreement records that the conductor will not have any right in the suit premises, the fact remains that the Appellant permitted a third party to conduct the business in the premises. The said agreement records that the electricity charges and water charges shall be paid by the conductor. The agreement records that the conductor was to pay to Rs.6000/- p.m. to the Appellant. Thus, the Appellant has indulged in profiteering. The Appellant is paying royalty of Rs.1,500/- p.m. The very fact that the agreement has been admittedly executed, it is obvious that a breach has been committed of clause 2 of the agreement which enjoins the Appellant as agent of the Court Receiver not to assign benefit of the agreement to any third party. The Appellant has permitted the third party to carry on business.

5. There is one more aspect of the matter. An application for cancellation of the appointment of the Appellant as an agent of the Court Receiver was pending in the court since

2005. The order dated 1st December 2006 passed in the C.A.No.3627/2005 shows that the Appellant was aware of the pendency of the Application. During the pendency of the said application, the Appellant has executed the said conducting agreement without notice to the Court Receiver.

6. The appointment of the Appellant as an agent of the Court Receiver was continued by this Court even after dismissal of the suit filed by the Appellant. The Appellant has admittedly committed a serious breach of the terms and conditions of the agency agreement by allowing the third party to carry on business. The Appellant has indulged in profiteering by allowing the third party to carry on business. This breach of agreement on the part of the Appellant is required to be viewed very seriously. The subsequent cancellation of conducting agreement has no significance. It is pertinent to note that even after termination of the agency agreement, the Appellant had not cancelled the arrangement with the third party and the third party has filed an affidavit on 2nd July 2007 in this court stating that he was conducting the business.

7. In terms of the order passed by this court, the Receiver was directed to give hearing. The Receiver heard the Advocates for the parties and came to the conclusion that the breach has been committed by the Appellant of the agency agreement. There is a detailed order passed by the Court Receiver on 15th October 2007.

8. Considering these aforesaid aspects, the Court Receiver was right in terminating the agency agreement in favour of the Appellant. Therefore, the the Respondent will have to be appointed as an agent of the Court Receiver on the same terms and conditions on which the Appellant has been appointed as an agent.

9. Hence, I pass the following order :

i) Civil Application No.3222 of 2007 is rejected.

ii) The Appellant is directed to hand over the possession of the suit property to the Court Receiver within a period of six weeks from today. If the Appellant fails to hand over the possession, the Court Receiver will proceed to take forcible possession of the suit premises.

iii) The Court Receiver will appoint the Respondent as an agent of the Court Receiver on the same terms and conditions on which the Appellant has been appointed as an agent of the Court Receiver as per the order passed in Civil Application No.1930 of 2007.

iv) Civil Application No.3627 of 2005 is disposed of accordingly.

v) Parties and the Court Receiver to act upon an

authenticated copy of this order.

JUDGE